

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Attorney Docket No.: 018794-000400US

PATENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

On October 15, 2003

TOWNSEND and TOWNSEND and CREW LLP

By: *Judith Cottler*

RECEIVED
OCT 24 2003
GROUP 3600

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

Joseph B. Prullage

Application No.: 09/441,035

Filed: November 16, 1999

For: INSECT BAIT STATION

Customer No.: 20350

Confirmation No.: 3784

Examiner: K. Rowan

Art Unit: 3643

APPELLANT'S BRIEF UNDER 37 CFR § 1.192

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant offers this Appeal Brief in furtherance of the Notice of Appeal filed on July 24, 2003 in the above-referenced patent application. A one-month extension of time request accompanies this Appeal Brief. This Appeal Brief is submitted in triplicate as required by 37 C.F.R. § 1.192(a). Please deduct the requisite fee, pursuant to 37 C.F.R. § 1.17(c), of \$320 from deposit account 20-1430, and deduct any additional fees or credit any excess fees associated with the Appeal Brief to such deposit account. Appendix A, attached hereto, contains a copy of all claims pending in this case.

I. REAL PARTY IN INTEREST

All right, title, and interest in the subject invention and application are assigned to Wellmark International, having offices at 1100 E. Woodfield Road, Suite 500, Schaumburg, Illinois 60173. Therefore, Wellmark International is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-34 were originally presented in the application. Claims 5, 6, and 11 were canceled in an amendment filed on September 28, 2001. Claim 35 was added in an amendment filed on July 19, 2002. Claims 1-4, 7-10, and 12-35 have been rejected. Claims 1-4, 7-10, and 12-35 are the subject of this appeal. No other claims are pending.

IV. STATUS OF AMENDMENTS

An Office Action was mailed on April 28, 2003. An amendment filed in response to the Office Action accompanies the present Appeal Brief. Appellant respectfully requests entry of the amendment. A copy of all the pending claims, as currently amended, is provided in Appendix A, attached hereto.

V. SUMMARY OF THE INVENTION

The present invention is related generally to an insect bait station, and in particular, to an insect bait station designed especially for flies (Application filed November 16, 1999 ("Application"), page 1, lines 3-4). As flies are attracted to a surface's edge and to baits that give off odors, the present invention provides an insect bait station that maximizes the number of edges that an insect, such as a fly, can rest, and optionally contains a pheromone or feeding attractant (*Id.*, page 2, lines 18-20; page 4, lines 26-30). More particularly, the present invention relates to an insect bait station for attracting and killing an

insect, such as a fly, wherein the insect bait station comprises a body configured to maximize the landing surface for the insect (*e.g.*, fly) and contains at least one external recessed groove for supporting an oral insecticide (*Id.*, page 2, lines 20-23 and 27; page 5, lines 33-34). In a preferred embodiment, the external recessed grooves on the body of the insect bait station extend longitudinally along the length of the body (*Id.*, page 5, lines 11-12).

The appealed claims are directed to an insect bait station for attracting and killing an insect (Claim 1; Application, page 2, lines 20-21). The insect bait station comprises a body having an external surface with at least one external longitudinal recessed groove for supporting a self-adhering oral insecticide (Claim 1; Application, page 2, lines 21-23 and 27; page 5, lines 11-12). The body of the insect bait station is configured to be a cylinder or sphere (Claims 2 and 3; Application, page 2, line 26). In certain aspects, the body is configured as a cylinder with elongated grooves (Claim 4; Application, page 2, lines 28-29). Preferably, the cylindrical body comprises a plurality of grooves (Claim 8; Application, page 2, lines 23-24).

More particularly, the external grooves of the insect bait station contain a viscous liquid or solid pesticide, preferably a fast acting oral insecticide (Claims 15-17 and 19; Application, from page 2, line 30 to page 3, line 2 and page 6, lines 5-11). The insect bait station may further comprise a hanger member connected to the body (Claim 12; Application, page 4, lines 14-15). The insect bait station may also further comprise a pest attractant reservoir containing a pest attractant such as an insect pheromone or a feeding attractant (Claims 20, 23, and 24. Application, page 4, lines 26-32).

The appealed claims are also directed to an insect bait station for killing the house fly *Musca domestica* (Claim 27; Application, page 1, line 7, and page 2, lines 20-21). The insect bait station comprises a body having an external surface oriented vertically (Claim 27; Application, from page 2, line 30 to page 3, line 2). The external surface further comprises at least one recessed groove configured to support an oral insecticide of a viscous liquid or solid formulation (*Id.*). The oral insecticide is exposed to the external surface of the body (*Id.*). In certain aspects, the recessed groove covers at least 30% of the total area of the

external surface (Claim 30; Application, page 2, lines 24-25). Preferably, the body of the insect bait station is cylindrical, the oral insecticide can be a nitromethylene or phenyl pyrazole insecticide, and the external surface of the body provides one or more edges for an insect to land on or near the insecticide (Claim 35; Application, page 2, lines 26-27, from page 2, line 33 to page 3, line 2, and page 6, lines 5-11).

The appealed claims are further directed to an insect bait station comprising a cylindrical body having a continuous external surface with at least one external longitudinal recessed groove for supporting and exposing an oral insecticide to the external surface, thus providing one or more edges for an insect to land on or near the insecticide (Claim 31; Application, page 4, lines 8-9, and from page 2, line 30 to page 3, line 2).

The appealed claims are additionally directed to a method for killing an insect (Claim 33; Application, page 3, lines 10-14). The method comprises providing a body having at least one external longitudinal recessed groove on an external surface to provide one or more edges for an insect to land and applying a self-adhering oral insecticide on the groove, thereby exposing the insecticide to the external surface and placing it near one or more edges (Claim 33; Application, page 2, line 27; page 3, lines 1-2 and 10-14, and page 4, lines 8-9).

VI. ISSUES

I. Whether claims 1, 12, 26-27, 31, and 33-34 are obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 1,286,763 issued to Pfeiffer in view of U.S. Patent No. 4,310,985 issued to Foster *et al.*

II. Whether claims 2-4, 7-10, 13-25, 28-30, 32, and 35 are obvious under 35 U.S.C. § 103(a) over Pfeiffer in view of Foster *et al.* as applied to claim 1 above, and further in view of U.S. Patent No. 4,671,010 issued to Conlee *et al.*

III. Whether claims 1, 15-19, 20-21, 24, 26, 31, and 33-34 are anticipated under 35 U.S.C. § 102(b) over Foster *et al.*

IV. Whether claims 1-4, 7-8, 15-19, 25, 26, 27, 29, 31, and 33-35 are anticipated under 35 U.S.C. § 102(b) over U.S. Patent No. 4,908,977 issued to Foster.

VII. GROUPING OF THE CLAIMS

Appellant submits that the claims stand or fall together for each ground of rejection that Appellant contests herein.

VIII. ARGUMENT

I. Whether claims 1, 12, 26-27, 31, and 33-34 are obvious under 35 U.S.C. § 103(a) over Pfeiffer in view of Foster *et al.*

In the Office Action dated April 28, 2003, claims 1, 12, 26-27, 31, and 33-34 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 1,286,763 issued to Pfeiffer in view of U.S. Patent No. 4,310,985 issued to Foster *et al.* Appellant respectfully traverses this rejection for the following reasons discussed below.

The present rejection does not establish *prima facie* obviousness under 35 U.S.C. § 103 and M.P.E.P. §§ 2142-2143. The Examiner bears the initial burden to establish and support *prima facie* obviousness (*In re Rinehart*, 189 U.S.P.Q. 143 (CCPA 1976)). To establish a *prima facie* case of obviousness, three basic criteria must be met (M.P.E.P. § 2142). First, the Examiner must show some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings (M.P.E.P. § 2143.01; *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988)). Secondly, the Examiner must establish that there is a reasonable expectation of success (M.P.E.P. § 2143.02). Thirdly, the Examiner must establish that the prior art references, alone or in combination, teach or suggest all the claim limitations (M.P.E.P. § 2143.03; *In re Royka*, 180 U.S.P.Q. 580 (CCPA 1974)). The teachings, suggestions, and reasonable expectations of success must be found in the prior art, rather than in appellant's disclosure (M.P.E.P. § 2143; *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)). Appellant respectfully submits that a *prima facie* case of obviousness has not been met because the Examiner's rejection fails on at least one of the above requirements.

1. There is no Suggestion or Motivation to Modify the References

Appellant asserts that there is simply no motivation or suggestion provided in the cited references to modify their teachings in the way the Examiner has contemplated. The Examiner alleges that Pfeiffer teaches an insect bait station with an external groove 17 (Office Action dated April 28, 2003, page 3). However, as set forth in paragraphs 8 and 9 of the Declaration by George Lindahl ("the Lindahl Declaration"¹), a Vice President of the assignee of the subject application, which was originally submitted on July 19, 2002, Pfeiffer teaches "annular troughs or ledges" (page 1, line 80 of Pfeiffer), while the present invention teaches and claims a "recessed groove." As taught by Pfeiffer, a trough is a holder or container for a poison or a viscous substance (page 1, lines 60-61 of Pfeiffer). In contrast, the present invention teaches and claims grooves that are *recessed* from the surface (page 2, line 27). As there is no clearly defined surface from which the troughs of Pfeiffer can be recessed, Appellant submits that Pfeiffer fails to teach or provide a motivation or suggestion for a recessed groove as is currently taught and claimed.

The Examiner also alleges that it would have been obvious to employ grooves with other shapes, such as longitudinal grooves, in the station as taught by Pfeiffer (Office Action dated April 28, 2003, page 3). However, Appellant respectfully asserts that Pfeiffer does not teach or suggest recessed grooves, but instead teaches annular troughs or ledges arranged horizontally around the body. By contrast, the present invention teaches and claims grooves that are recessed *within* the body of the insect bait station. As Pfeiffer fails to teach a recessed groove of any shape, Appellant submits that there is no motivation or suggestion to modify the teachings of Pfeiffer to arrive at a longitudinal recessed groove as is presently claimed.

The Examiner further alleges that the insecticide of Pfeiffer is self-adhering since it stays in the groove (Office Action dated April 28, 2003, page 3). The ledges of Pfeiffer are "holders or containers for either a poison or a viscous substance" (page 1, lines

¹ A copy of the Lindahl Declaration is attached herewith for the convenience of the Board.

60-61). In the case of Pfeiffer, the insecticide is simply "dumped or poured upon the apex 20 whence it will flow or fall down into or over all the various ledges 17, portions thereof being retained in the troughs formed by such ledges" (page 1, lines 90-96 of Pfeiffer). Thus, contrary to the Examiner's allegation, the insecticide of Pfeiffer is not self-adhering (Office Action dated April 28, 2003, page 3). Again, paragraphs 8 and 9 of the Lindahl Declaration set forth that the ledges 17 simply retain the insecticide as a result of their shape. By contrast, the insecticide of the present invention self-adheres to the recessed grooves and "sticks to the body and stays within the [recessed] groove even under the force of gravity" (page 5, lines 1-3). Clearly, there is no suggestion or motivation to modify the troughs or ledges of Pfeiffer into the recessed grooves of the present invention, as such recessed grooves would be incapable of retaining the "liquid poison" used in Pfeiffer, which flows or falls down from the apex to fill the horizontally-arranged troughs or ledges (page 2, lines 33-39 of Pfeiffer).

In addition, the Examiner alleges that, although Pfeiffer does not teach that the poison used is an oral insecticide, it would have been obvious to provide Pfeiffer with an oral insecticide as disclosed by Foster *et al.* (Office Action dated April 28, 2003, page 3). Foster *et al.* teach the use of the insecticide tetrahydro-2-(nitromethylene)-2H-1,3-thiazine, applied to a target area surface such as blotter paper or black paper, and used in a device for combating flies (col. 3, lines 24-29; Examples 4 and 6 of Foster *et al.*). However, Foster *et al.* fail to teach or suggest the use of the oral insecticide in a recessed groove along the vertical axis of the body as is presently claimed, but instead disclose that the insecticide resides on a flat horizontal surface. Thus, neither reference, alone or in combination, teaches or suggests the use of recessed grooves for supporting a self-adhering insecticide. Appellant, therefore, respectfully requests the Board to overturn the rejection of obviousness and send this application to issue.

2. There is No Reasonable Expectation of Success

Appellant asserts that there is absolutely no reasonable expectation that the present invention would be successful based on the teachings of Pfeiffer in view of Foster *et*

al. As set forth in paragraphs 10 and 11 of the Lindahl Declaration, the Pfeiffer design provides flat surfaces that are less attractive for flies to land on, thus rendering them non-optimal. Similarly, the Foster *et al.* design provides flat surfaces in the form of sheets such as blotter paper or black paper, also considered to be non-optimal in light of the Lindahl Declaration. By contrast, the present invention teaches and claims an insect bait station comprising a body having recessed grooves for supporting a self-adhering oral insecticide. However, because neither reference alone or in combination teaches the use of recessed grooves, one of skill in the art would not have expected, at the time of the present invention, that the use of such grooves would be successful.

3. The Cited References Do Not Teach All the Limitations of the Claims

Finally, Appellant asserts that the combination of Pfeiffer and Foster *et al.* fails to teach or suggest all the limitations of the claims. As discussed above, the present invention discloses and claims an insect bait station comprising a body having recessed grooves for supporting a self-adhering oral insecticide. Neither reference teaches nor suggests such a device. Rather, Pfeiffer teaches only a device having troughs or ledges filled with liquid poison under the force of gravity, and Foster *et al.* teach a device having a flat horizontal target surface which contains an insecticide. As such, the references alone or in combination do not teach or suggest all the limitations of the claims.

Therefore, in view of the foregoing reasons, Appellant asserts that the Examiner has failed to present a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests that the Board overturn the rejection under 35 U.S.C. § 103(a) and claims 1, 12, 26-27, 31, and 33-34 be allowed.

II. Whether claims 2-4, 7-10, 13-25, 28-30, 32, and 35 are obvious under 35 U.S.C. § 103(a) over Pfeiffer in view of Foster *et al.*, and further in view of Conlee *et al.*

In the Office Action dated April 28, 2003, claims 2-4, 7-10, 13-25, 28-30, 32, and 35 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Pfeiffer in view of Foster *et al.* as applied to claim 1 above, and further in view of U.S. Patent No. 4,671,010 issued to Conlee *et al.* Appellant respectfully traverses this rejection for the following reasons.

As discussed above, M.P.E.P. § 2143 sets forth three elements that must be present in order to establish a *prima facie* case of obviousness. However, Appellant asserts that a *prima facie* case of obviousness has not been established for the following reasons: 1) there is no suggestion or motivation to modify the references; 2) there is no reasonable expectation of success; and 3) the cited references do not teach or suggest all the claim limitations.

1. There is no Suggestion or Motivation to Modify the References

Appellant asserts that there is simply no motivation or suggestion provided in the cited references to modify their teachings in the way the Examiner has contemplated. The Examiner alleges that "it would have been obvious to form the body of Pfeiffer in view of Foster as a cylinder as shown by Conlee since merely one equivalent shape is being substituted for another" (Office Action dated April 28, 2003, page 4). However, Appellant submits that none of the references, whether alone or in combination, teaches or suggests the use of a cylindrical body having a recessed groove for supporting a self-adhering oral insecticide.

Pfeiffer teaches a conical or beehive shaped device having "troughs or ledges," similar to rain gutters, that retain the insecticide as a result of their shape (Figures 6, 7, and 12 of Pfeiffer). The secondary reference of Foster *et al.* does not supply the teachings that are clearly lacking in Pfeiffer. Foster *et al.* teach a device having a flat horizontal target surface, such as a sheet of black paper or blotter paper, on which an insecticide is applied. Further, Foster *et al.* do not teach or suggest the use of a recessed groove for supporting an insecticide, and also fail to teach or suggest a three-dimensional surface having a recessed groove for supporting an insecticide. Thus, even if the insecticide of Foster *et al.* were

combined with the teachings of Pfeiffer, one skilled in the art would not arrive at the present device comprising a body having a recessed groove for supporting a self-adhering oral insecticide.

Further, the tertiary reference of Conlee *et al.* fails to supply the teachings that are clearly lacking in Pfeiffer in view of Foster *et al.* Conlee *et al.* teach a micro-tube filament coated on the outer surface with both an insecticide and an agent that allows the filament to adhere to the leaf of a plant (col. 3, lines 8-18 of Conlee *et al.*). However, Conlee *et al.* do not teach or suggest the use of recessed grooves for supporting an insecticide on the outer surface. Rather, the insecticide coating of Conlee *et al.* is applied over the entire outer surface of the filament, in contrast to the insecticide being specifically applied to and supported by the recessed grooves of the present invention. Conlee *et al.* also teach the use of a contact insecticide (col. 3, lines 25-28 of Conlee *et al.*), and there is no teaching or suggestion for the use of an oral insecticide as disclosed in the present invention. Thus, even if the filament of Conlee *et al.* were combined with the teachings of Pfeiffer in view of Foster *et al.*, one skilled in the art would not arrive at the present device comprising a body having a recessed groove for supporting a self-adhering oral insecticide. As such, Appellant asserts that there is no teaching, suggestion, or motivation to combine or modify the references to produce the claimed invention. Appellant, therefore, respectfully requests that the Board overturn the rejection of obviousness and send this application to issue.

2. There is No Reasonable Expectation of Success

Appellant asserts that there is absolutely no reasonable expectation that the present invention would be successful based on the teachings of Pfeiffer in view of Foster *et al.*, and further in view of Conlee *et al.* As set forth in paragraphs 10 and 11 of the Lindahl Declaration, the Pfeiffer design provides flat surfaces that are less attractive for flies to land on, thus rendering them non-optimal. Further, the flat, single surface design of Conlee *et al.* is considered to be non-optimal (the Lindahl Declaration, paragraph 11). Similarly, the Foster *et al.* design provides flat surfaces in the form of sheets such as blotter paper or black paper, also considered to be non-optimal in light of the Lindahl Declaration. By contrast, the

present invention teaches and claims an insect bait station comprising a body having recessed grooves for supporting a self-adhering oral insecticide. However, because none of the references alone or in combination teaches the use of recessed grooves, one of skill in the art would not have expected, at the time of the present invention, that the use of such grooves would be successful.

3. The Cited References Do Not Teach All the Limitations of the Claims

Finally, Appellant asserts that the combination of Pfeiffer, Foster *et al.*, and Conlee *et al.* fails to teach or suggest all the limitations of the claims. As discussed above, the present invention discloses and claims an insect bait station comprising a body having recessed grooves for supporting a self-adhering oral insecticide. None of the references teaches or suggests such an innovative device. Rather, Pfeiffer teaches only a device having troughs or ledges filled with liquid poison under the force of gravity; Foster *et al.* teach a device having a flat horizontal target surface which contains an insecticide; and Conlee *et al.* teach a microscopic filament device having an insecticide coating applied to the entire outer surface. As such, the references alone or in combination do not teach or suggest all the limitations of the claims.

Therefore, in view of the foregoing reasons, the Examiner has failed to present a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests that the Board overturn the rejection under 35 U.S.C. § 103(a), and that claims 2-4, 7-10, 13-25, 28-30, 32, and 35 be allowed.

III. Whether claims 1, 15-19, 20-21, 24, 26, 31, and 33-34 are anticipated under 35 U.S.C. § 102(b) over Foster *et al.*

In the Office Action dated April 28, 2003, claims 1, 15-19, 20-21, 24, 26, 31, and 33-34 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Foster *et al.* Appellant respectfully traverses this rejection for the following reasons discussed below.

The present invention teaches an insect bait station comprising a body having a recessed groove for supporting a self-adhering oral insecticide. Further, the body can be in the shape of a cylinder or a sphere. Such limitations have not been disclosed or suggested by Foster *et al.*

As set forth in M.P.E.P. § 2131, a single cited art reference must teach each and every element of the claim to establish anticipation under 35 U.S.C. § 102. The Court of Appeals for the Federal Circuit has held that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Appellant asserts that Foster *et al.* nowhere describes or suggests such a device as is currently claimed.

The Examiner alleges that Foster *et al.* teach "a bait station having a body 12, 13 with an external surface and one external longitudinal recessed groove for supporting a self-adhering oral insecticide TNMT" (Office Action dated April 28, 2003, page 6). Appellant submits that, as clearly shown in Figure 1 of Foster *et al.*, the "body" is actually "the base section, which is divided into a lower portion 12 and an upper portion 13, [that] surrounds the bottom and sides of target area 10." (col. 10, lines 16-21 of Foster *et al.*). As such, the base section 12, 13 of Foster *et al.* supports the target area 10, but lacks any external recessed grooves, insecticide, or external recessed grooves supporting an insecticide. In fact, Foster *et al.* teach that "the target area [10] of the device is the surface containing the TNMT insecticide" (col. 3, lines 24-25 of Foster *et al.*). However, the target area is a flat two-dimensional surface, such as black paper or blotter paper, and does not contain any external recessed grooves. As such, Appellant believes that each and every element in the claims of the present invention is not found in Foster *et al.* Accordingly, Appellant respectfully requests that the anticipation rejection be withdrawn and that claims 1, 15-19, 20-21, 24, 26, 31, and 33-34 be allowed.

IV. Whether claims 1-4, 7-8, 15-19, 25, 26, 27, 29, 31, and 33-35 are anticipated under 35 U.S.C. § 102(b) over U.S. Patent No. 4,908,977 issued to Foster

In the Office Action dated April 28, 2003, claims 1-4, 7-8, 15-19, 25, 26, 27, 29, 31, and 33-35 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,908,977 issued to Foster ("the Foster '977 reference"). Appellant respectfully traverses this rejection for the following reasons discussed below.

The present invention teaches and claims an insect bait station comprising a body having a recessed groove for supporting a self-adhering oral insecticide. Further, the body is three-dimensional, and can be in the shape of a cylinder or a sphere. Such limitations have not been disclosed or suggested by the Foster *et al.* '977 reference.

As set forth in M.P.E.P. § 2131, a single cited art reference must teach each and every element of the claim to establish anticipation under 35 U.S.C. § 102. The Court of Appeals for the Federal Circuit has held that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Appellant asserts that the Foster '977 reference nowhere describes or suggests such a device of the present invention.

The Examiner alleges that the Foster '977 reference teaches "a bait station for attracting and killing insects having a cylindrical body 2, an external recessed groove in grill 5 (the groove is between vertical wires that make up the grill) for supporting a self-adhering oral insecticide TNMT" (Office Action dated April 28, 2003, page 6). Appellant submits that the "cylindrical body 2," as alleged by the Examiner, is actually a bond or collar, "conveniently employed between the base section and the target area to facilitate the shedding of dead arthropods from the target area" (col. 3, lines 62-65 of Foster '977). As such, the bond or collar 2 supports the target area 3, but lacks any external recessed grooves, insecticide, or external recessed grooves supporting an insecticide. In fact, similar to Foster *et al.* as discussed above, the Foster '977 reference teaches that the target area is a flat two-

dimensional surface, such as blotter paper or cloth, which contains an insecticide. However, the target area of the Foster '977 reference does not contain any external recessed grooves.

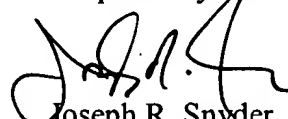
Further, the Foster '977 reference teaches that the target area 3 can be covered with a grill 5, as shown in Figure 1. However, contrary to the Examiner's allegation, the grill does not form external recessed grooves and does not support the insecticide. Rather, the primary function of the grill is "to prevent accidental contact of the target area by humans and domestic pets" (col. 3, lines 38-40 of Foster '977). Appellant also asserts that even if the target area is covered by a grill, this two-piece configuration fails to provide the single, three-dimensional body having a recessed groove for supporting an insecticide of the present invention. As such, Appellant believes that each and every element in the claims of the present invention is not found in the Foster *et al.* '977 reference. Accordingly, Appellant respectfully requests that the anticipation rejection be withdrawn and that claims 1-4, 7-8, 15-19, 25, 26, 27, 29, 31, and 33-35 be allowed.

CONCLUSION

Appellant believes that the above discussion is fully responsive to all grounds of rejection set forth in the Office Action dated April 28, 2003.

If for any reasons the Examiner believes a telephone conference would in any way expedite resolution of the issues raised in this appeal, the Examiner is invited to telephone the undersigned at 925-472-5000.

Respectfully submitted,



Joseph R. Snyder
Reg. No. 39,381

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 925-472-5000
Fax: 415-576-0300
JS:jch
60035076 v1

APPENDIX A

1. (previously amended) An insect bait station for attracting and killing an insect, said insect station comprising:

a body having an external surface, said body having at least one external longitudinal recessed groove for supporting a self-adhering oral insecticide.

2. (previously amended) The insect bait station according to claim 1, wherein said body is cylindrical or spherical.

3. (original) The insect bait station according to claim 2, wherein said body comprises a cylinder.

4. (original) The insect bait station according to claim 3, wherein said groove is elongated.

7. (original) The insect bait station according to claim 4, wherein the height of said groove is at least two times larger than the width of said groove.

8. (original) The insect bait station according to claim 3, wherein said body has a plurality of grooves.

9. (original) The insect bait station according to claim 3, wherein said cylinder has a diameter of between about ¼ inch to about 2 inches.

10. (original) The insect bait station according to claim 3, wherein said cylinder is between about 6 inches to about 18 inches in length.

12. (original) The insect bait station according to claim 1, further comprising a hanger member connected to said body.

13. (original) The insect bait station according to claim 1, wherein said body is extrusion molded.

14. (previously amended) The insect bait station according to claim 1, wherein said body is injection molded.

15. (original) The insect bait station according to claim 3, further comprising a pesticide disposed in the external groove wherein said pesticide is a viscous liquid or solid formulation.

16. (currently amended) The insect bait station according to claim 15, wherein said pesticide is an oral insecticide.

17. (currently amended) The insect bait station according to claim 16, wherein said oral insecticide is a member selected from the group consisting of nitromethylene and phenyl pyrazole.

18. (currently amended) The insect bait station according to claim 16, wherein said oral insecticide sticks to said body under the force of gravity.

19. (currently amended) The insect bait station according to claim 16, wherein said oral insecticide is a fast acting oral insecticide.

20. (original) The insect bait station according to claim 1, further comprising a pest attractant reservoir connected to said body.

21. (previously amended) The insect bait station according to claim 20, wherein said body has a top portion and a bottom portion, said pest attractant reservoir being affixed to said bottom portion.

22. (original) The insect bait station according to claim 20, wherein said pest attractant reservoir being affixed to said hanger member.

23. (original) The insect bait station according to claim 20, wherein said pest attractant is an insect pheromone.

24. (original) The insect bait station according to claim 20, wherein said pest attractant is a feeding attractant.

25. (original) The insect bait station according to claim 1, further comprising a cylinder sheath.

26. (original) The insect bait station according to claim 1, wherein said pesticide is formulated to kill *Musca domestica*.

27. (previously amended) An insect bait station for killing *Musca domestica*, said station comprising:

a body having an external surface oriented generally vertically, said external surface comprising at least one recessed groove configured to support an oral insecticide of a viscous liquid or solid formulation so that said oral insecticide is exposed to said external surface of said body.

28. (original) The insect bait station according to claim 27, wherein said external surface of said body comprises a plurality of generally vertical grooves.

29. (original) The insect bait station according to claim 27, wherein said body is generally cylindrical.

30. (original) The insect bait station according to claim 27, wherein said at least one groove covers an area of the external surface equal to at least about 30% of the total area of said external surface.

31. (previously amended) An insect bait station comprising:
a body including a continuous external surface having at least one external longitudinal recessed groove for supporting an oral insecticide, said at least one external longitudinal groove exposing said oral insecticide to said external surface of said body and providing one or more edges for insects to land on or near said oral insecticide.

32. (original) The insect bait station according to claim 31, wherein said body is generally cylindrical.

33. (previously amended) A method for killing an insect, said method comprising:
providing a station body having at least one external longitudinal recessed groove on an external surface to provide one or more edges for said insect to land; and
applying a self-adhering oral insecticide on said external longitudinal recessed groove to expose said oral insecticide to said external surface and place said oral insecticide at or near said one or more edges.

34. (original) The method according to claim 33, wherein said insect is a fly.

35. (previously amended) An insect bait station for killing *Musca domestica*, said station comprising:

a cylindrical body having an external surface oriented generally vertically, said external surface comprising at least one recessed groove configured to support an oral insecticide of a viscous liquid or solid formulation so that said oral insecticide is exposed to said external surface of said body, wherein said oral insecticide is a member selected from the group consisting of a nitromethylene and a phenyl pyrazole; and wherein said external surface of said body provides one or more edges for insects to land on or near said oral insecticide.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

PATENT

On July 19, 2002

TOWNSEND and TOWNSEND and CREW LLP

By: Debra Ann DeBello
Debra Ann DeBello

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Joseph B. Prullage

Application No.: 09/441,035

Filed: November 16, 1999

For: INSECT BAIT STATION

Examiner: K. Rowan

Art Unit: 3643

DECLARATION UNDER 37 C.F.R. 1.132

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

I, George Lindahl, being duly warned that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.C. § 1001), and may jeopardize the validity of the patent application or any patent issuing thereon, state and declare as follows:

1. I am a Vice President of Development and Technical Services of Wellmark International. Wellmark is a world leader in pest control management, and the assignee of the present application.
2. I have read and am familiar with the contents of the present patent application. In addition, I have read the Office Action dated February 19, 2002, received in the present case. It is my understanding that the Examiner

is concerned that claims 1, 12, 26-27, 31, and 33-34 are allegedly obvious under 35 U.S.C. §103(a) over U.S. Patent No. 1,286,763 ("Pfeiffer").

Similarly, the Examiner is concerned that claims 2-4, 7-10, 13-25, 28-30, and 32 are allegedly obvious under 35 U.S.C. §103(a) over Pfeiffer in view of U.S. Patent No. 4,671,010 ("Conlee"). It is also my understanding that during an interview on May 21, 2002 with Applicants' representative, the Examiner was especially concerned with the teaching of Conlee. For the reasons set forth herein, I believe the Examiner's concerns have been overcome.

3. Conlee describes an old concept with a new feature. The concept is a hollow microscopic fiber, wherein pheromones are dispensed. The diameter of the hollow portion of the microfiber regulates the volatilization of its contents. Masses of these microfibers are aerially applied with sticking agents so that the microfibers stick to a crop. The pheromone is dispensed throughout the field causing mating disruptions.
4. The new feature in the Conlee patent is the addition of an insecticide coating the outer surface of the microfiber, which results in a decrease of mated pink bollworms, e.g. from 15% to 7% compared to prior art. Please see Example 2 of Conlee.
5. Conlee describes a treatment designed to be applied to one side of a leaf, in essence, exposing only one side of the microfiber. In contrast, the present device is preferably hung in the foraging habitat of a house fly, and is available to the house fly regardless of its approach or chosen landing site.
6. Conlee teaches microtubules coated on the outside with a *contact* toxicant. The present invention preferably uses an *oral* toxicant bait applied to a longitudinal groove on the outside of the station.

7. Advantageously, the present invention maximizes landing sites available and bait presentation to foraging flies, due to the continuous curved surface, which by definition, is an infinite number of edges, while at the same time minimizing exposure of the toxicant while the station is handled.
8. Importantly, another inventive feature of the present invention is that an unbaited part of the present device comes into contact with the handler, while, for example, being placed at the site to be treated. The present invention **minimizes** human contact while handling, and at the same time, presents baited landing surfaces to the fly from all directions.
9. Pfeiffer teaches a beehive device having a trough shaped base of annular form and a plurality of downwardly pressed feet. Pfeiffer teaches ledges that “hold” the insecticide. In Pfeiffer, the insecticide material is poured down the apex wherein the ledges retain insecticide. (Please see col 2, lines 87-96). Unlike the present invention, the Pfeiffer design **maximizes** potential human contact and exposure with the applied insecticide.
10. The Pfeiffer design can be viewed as a series of discs of diminishing diameters stacked one upon another. Although this design produces some curved surfaces, much of the design surface area provides only flat surfaces, which are less attractive for flies to land on.
11. Prior to the advent of the present invention, commercially available insect station designs incorporate single surfaces, such as a flat design (please see the Exhibit 1). This single surface design, or flat design such as Conlee and the flat surfaces of Pfeiffer, are non-optimal.
12. For example, side-by-side empirical data are provided herein demonstrating unexpected advantageous properties of the present invention versus the flat design.

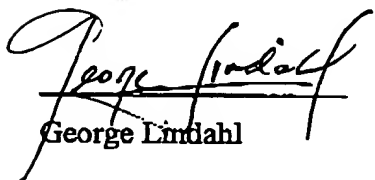
13. In this side-by-side comparative test, a single-surface flat station design (comparative), was compared to a tubular design (inventive) wherein the tubular station was designed to present baited landing surfaces to the fly from all directions.
14. The test system consisted of two 24 inch X 24 inch X 24 inch screen flight cages. A single station of each configuration was placed in each cage. A single 12 inch X 12 inch X 12 inch cage served as a control environment. 250 Domestic House Flies (*Musca domestica*) were released into each test cage and 30 Domestic House Flies were released into the control cage. The test substance consisted of a Tubular station coated with a sugar/nithiazine slurry and allowed to dry. This design was compared with a flat design coated on two sides with the same sugar/nithiazine mixture and allowed to dry. The slurry was from lot# JM220, in both cases, and contained approximately 0.5% Nithiazine.
15. One station of each design, flat and tubular, was placed into a test cage by hanging from the inside top of the cage. Small dishes with water soaked cotton were provided for the flies in each cage. The flies were introduced into the appropriate flight cages: 250 in each treated cage and 30 in the control cage. Dead fly counts were made at 1hr., 2 hr., 3hr., 4hr., 5hr., 6hr., and 19.5hr., after introduction of the flies.
16. As shown in Table 1 (Exhibit 2), the inventive design was unexpectedly superior in percent (%) reduction of flies. After 19.5 hours, the inventive design resulted in 58.8 % kill, whereas the flat design resulted in 33.6 % kill. The increase in kill is attributable solely to the change from a flat to a tubular design.
17. In fact, at every time point, the dead fly count was higher with the inventive design compared to the flat design (Exhibit 3).

Joseph B. Prullage
Application No.: 09/441,035
Page 5

PATENT

18. It is my opinion that neither Conlee nor Pfeiffer, alone or in combination make the instant invention obvious.

The declarant has nothing further to say.


George Lindahl

18 July 2002
Date

EXHIBIT 1



2

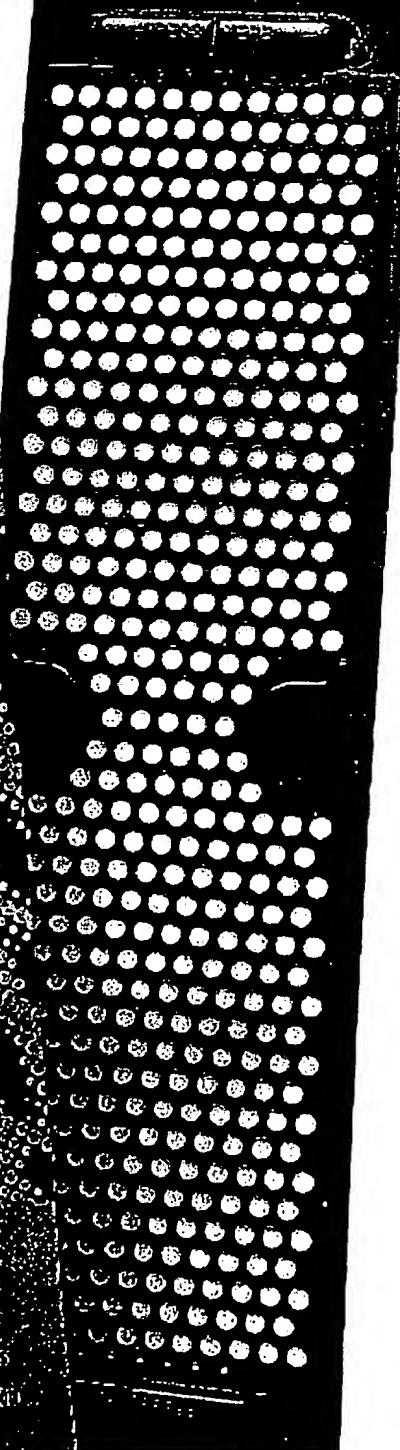
QUIKSTRIKE

GOLDEN MALRIN[®]

SWISS MADE
STRIKE

QUIKSTRIKE[™]

Swiss Made



QUIKSTRIKE[™]
SWISS MADE
STRIKE

QUIKSTRIKE[™]
SWISS MADE
STRIKE

EXHIBIT 2

**Tube vs. Flat
Nithiazine Fly Bait
Station Design
STATION**

CONFIGURATION	Dead Fly Count at Indicated Time							
	0	1 Hr.	2 Hr.	3 Hr.	4 Hr.	5 Hr.	6 Hr.	19.5 hr.
Flat Design	0	0	3	8	21	23	29	84
Tube Design	0	3	17	38	55	80	87	147
% Reduction Comparative Design	0%	0%	1.2%	3.2%	8.4%	9.2%	11.6%	33.6%
Inventive Design	0%	1.2%	6.8%	15.2%	22.0%	32.0%	34.8%	58.8%

EXHIBIT 3

Nithiazine Fly Bait Station

Flat vs. Tube Design Lab. Test

House Flies (*Musca domestica*)

